

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

STEVEN J. MALPERE, DAVID STAPLES )  
and MARJA STAPLES )  
 )  
Plaintiffs, ) Civil No. 2003-132  
 )  
 )  
v. ) Action for Damages,  
 ) Breach of Fiduciary  
 ) Responsibility, Etc.  
RUYTER BAY LAND PARTNERS, LLC, )  
RUYTER BAY LAND INVESTORS, LLC )  
MIKAEL VAN LOON, STEPHEN )  
STRANAHAN, CHARLES SALISBURY, )  
GRANT HATHAWAY, and FRANK MURRAY, )  
 )  
Defendants. )  
 )  
----- )  
RUYTER BAY LAND PARTNERS, LLC )  
and RUYTER BAY LAND )  
INVESTORS, LLC, )  
 )  
Counterclaimants, )  
 )  
v. ) Action for Damages and  
 ) Declaratory Judgment  
 )  
STEVEN J. MALPERE, DAVID STAPLES, )  
and MARJA STAPLES )  
 )  
Counterclaim defendants. )  
 )  
----- )

ATTORNEYS:

**Steven J. Malpere,**  
St. Thomas, USVI  
*Plaintiff pro se,*

**David Staples and Marja Staples**  
St. Thomas, USVI  
*Plaintiffs pro se,*

**Daryl Dodson, Esq.**

St. Thomas, USVI

*For the defendants.*

**MEMORANDUM**

Moore, J.

Defendants Ruyter Bay Land Partners, LLC, Ruyter Bay Land Investors, LLC, Mikael Van Loon, Stephen Stranahan, Charles Salisbury, and Grant Hathaway ["defendants"] move for summary judgment on all claims by plaintiffs against them and for partial summary judgment on their counterclaim against plaintiffs.<sup>1</sup> Plaintiffs filed a cross motion for summary judgment. For the reasons stated herein, I will grant defendants' motion and deny plaintiffs' cross-motion. I will also vacate all liens and lis pendens filed by plaintiffs.

**I. FACTS AND PROCEDURAL HISTORY**

Plaintiffs are owners of lots at Sprat Bay Estates on Water Island, and are members of the Sprat Bay Homeowners Association, Inc. ["SBHOA"]. In 1992, plaintiffs and the other Sprat Bay Estates owners' legal right to possession of their properties was terminated, when their master lease with the United States Department of the Interior expired. After expiration of the

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<sup>1</sup> According to defendants, defendant Frank Murray was not served in this action and has not entered an appearance.

lease, the parcel owners retained possession of their properties while the predecessor to the SBHOA, the Sprat Bay Corporation ["SBC"], negotiated on their behalf to obtain fee simple title to the parcels. Finally, in 1996, SBC and Interior executed a contract to provide plaintiffs and all other sub-sublessees at Sprat Bay Estates the right to purchase their lots. The contract required that SBC, rather than individual owners, come to closing with the \$1.972 million in cash Interior required for the sale of the 117.7 acres constituting Sprat Bay Estates. The contract provided that if SBC did not meet the terms of the contract, all owners of lots at Sprat Bay Estates would forfeit their interests.

To meet the closing deadline in June of 1998, a group of owners organized as Ruyter Bay Land Partners ["RBLP"] to provide the financing necessary for SBC's attorneys to close on the contract. RBLP transferred approximately \$1.2 million to SBC's attorneys. The money was used to purchase the 49.26 acres that remained unclaimed after the owners who were willing and able to pay for their lots had done so. The extra lots RBLP purchased were encumbered by restrictions specifying 1) that any owners who had not purchased the lots in which they had possessory interest had up to ninety days after the closing on the contract between SBC and Interior to do so, and 2) that the parcels be subject to

certain environmental restrictions imposed directly by Interior, including a provision conveying Sprat Point to The Nature Conservancy. These restrictions were spelled out in the contract between SBC and Interior in the form of a Declaration, running with the land and binding all future owners.

The Declaration was designed to foster dedication of parcels to green or open space. Depending upon the number of lots an owner possessed, she was entitled to certain assessment exemptions in compensation for donations. Under the declaration's aegis, RBLP developed a plan to dedicate the most environmentally sensitive parcels as green space. The Nature Conservancy agreed to accept a donation of land, provided it could be assured that any future home owners association for Sprat Bay would not revoke the exemption or impose assessments on it. To satisfy this condition, SBHOA prepared a First Amendment to the Declaration, providing that open space homeowners assessment exemption granted to any owner would be made permanent and irrevocable. This amendment was approved by two-thirds of the SBHOA. Thirty-one acres of land were then permanently and irrevocably exempted from all assessments by SBHOA and its successors, and conveyed to The Nature Conservancy.

## **II. DISCUSSION**

Defendants seek judgment as a matter of law on all claims made against them by plaintiffs, as well as on Count I of their counterclaim, requesting declaratory judgment that no assessments are owed on the parcels purchased by RBLP or those parcels donated to The Nature Conservancy for the period from June 27 through December 31, 2001, and that all liens filed by plaintiff Malpere be voided. Defendants also request that proceedings on Count II of their counterclaim, in which they request money damages for a slander of title claim, continue.

Plaintiffs, in their cross-motion for summary judgment request relief on numerous matters not included in the original complaint.<sup>2</sup> The original complaint requests judgment that RBLP owes SBHOA in excess of \$509,549 plus interest for fees, and that liens on the properties owned by RBLP and the Nature Conservancy be foreclosed.

### **A. Summary Judgment Standard**

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<sup>2</sup> Plaintiffs make the following new claims in their cross-motion for summary judgment: 1) that all amendments and resolutions be null and void, 2) that defendants be removed from the SBHOA board of directors, 3) that defendants be enjoined from employing a manager or making physical improvements to the properties, 4) that defendants repay all legal fees paid by SBHOA, 5) that defendants pay SBHOA \$315,000 in back dues for the period of June 26, 1998 to June 27, 2001, 6) that defendants repay the SBHOA \$50,000 for improperly taken dues exemptions, and 7) that defendants pay punitive damages to plaintiffs. A summary judgment motion is not an amended complaint and therefore an improper medium by which to raise new claims. I will therefore disregard these additional claims.

Summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The non-moving party may not simply rest on mere allegations or denials, but must establish by specific facts that there is a genuine issue for trial from which a reasonable juror could find for the non-movant. *Lawrence v. National Westminster Bank of New Jersey*, 98 F. 3d 61, 65 (3d Cir. 1996) (quoting *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 250 (1986)). In considering the specific facts presented, the Court must draw all reasonable inferences therefrom in favor of the non-moving party. *Serbin v. Bora Corp.*, 96 F.3d 66, 69 (3d Cir. 1996).

**B. Defendants' Arguments for Summary Judgment**

Defendants make several arguments for judgment as a matter of law in their favor. They argue first that plaintiffs lack standing to bring the claims they assert because the claims properly belong to SBHOA and they cannot make them as individuals. Defendants further aver that even if plaintiffs wished to pursue their claims as a derivative action, they cannot do so because they have not comported with the rules governing shareholder derivative suits. Defendants also contend that claims

by all the plaintiffs are barred by the equitable doctrine of laches. Finally, defendants argue that any claims by plaintiffs arising from the amendments to the contract between SBHOA and Interior are nullified because the amendments were approved by a two-thirds majority vote in the SBHOA.

**C. Plaintiff's Standing**

The original complaint contains an averment that Malpere is a shareholder in Sprat Bay Corporation and that he was also a member of the SBHOA.<sup>3</sup> Defendants contend that plaintiffs, as shareholders and members, cannot bring a cause of action on behalf of SBHOA. Plaintiff's complaint alleges that RBLP owes the SBHOA \$509,549 plus interest and also seeks punitive damages. These claims, if proven, would inure to the benefit of the SBHOA. I therefore agree with defendants that plaintiffs do not have standing to bring their claims on behalf of the SBHOA, because the claims are derivative of its rights. The law is unambiguous on this issue. *See Temp-Way Corp. v. Continental Bank*, 139 B.R. 299, 317 (E.D.Pa. 1992), *aff'd without op.* 981 F.2d 1248 (3d Cir. 1992). Furthermore, plaintiffs' response that "it would clearly be futile to ask the defendant-controlled SBHOA Board to bring action against defendants" is insufficient to save their cause of action. The futility argument is relevant under the auspices of

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<sup>3</sup> Plaintiffs David and Marja Staples later joined the action.

Federal Rule of Civil Procedure 23(1), but plaintiffs have not brought their cause of action as a shareholder derivative suit pursuant to that Rule, and indeed, have not adhered to its strict requirements even if the Court were inclined to interpret it as such, which it is not. Defendants are therefore entitled to summary judgment on the claims in plaintiffs' complaint that are made on behalf of the SBHOA.<sup>4</sup> Because their lack of standing forecloses plaintiffs' pursuit of these claims, I need not reach defendants' other arguments.

**D. Liens and Lis Pendens**

Plaintiffs make an additional claim in the original complaint that cannot be dismissed for lack of standing, but is subject to summary judgment on other grounds. Plaintiffs seek foreclosure on a series of liens filed by Malpere on April 24, 2003 against several parcels of land owned by RBLP and The Nature Conservancy. On July 30, 2003, Malpere filed a notice of lis pendens for the parcels included in the liens filed on April 24, 2003. On June 16, 2003, pursuant to a resolution of the Board of Directors of the SBHOA on June 7, 2003, the SBHOA notarized a release of lien, which was then filed on September 8, 2003. This

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<sup>4</sup> In the complaint, plaintiffs also appear to allege breach of fiduciary duty on the part of Mikael van Loon as President and Chairman of the SBHOA Board. They further allege that Ruyter's Bay Land Partners is in breach of contract to them for not abiding by the covenants. On a motion for summary judgment, plaintiffs have not offered enough evidence to survive the motion with respect to these claims.

release lists only the liens filed against the Ruyter Bay Land Partners properties. Plaintiffs then filed a second set of liens for unpaid charges and services on April 14, 2004 against all the properties the original liens included.<sup>5</sup>

Plaintiffs contend the filing of the liens was proper because the SBHOA covenants allow any member of the SBHOA to enforce the covenants through any legal action. The language the plaintiffs would rely on provides in relevant part:

To prevent the breach of or to enforce any of the rights, conditions, covenants, reservations, restrictions herein set forth, the company, its successors and assigns, the Association, or any Owner in Sprat Bay shall have the right to sue for an injunction, prohibitive or mandatory, to enforce the observation of said restrictive covenants, or any of them, in addition to an ordinary legal action for damages. . . .

This language does not, by a plain reading, confer a right to file liens against the property. In addition, the resolution of the Board of the SBHOA on which the release of liens was based, states that the SBHOA Board of Directors had reviewed the declaration and bylaws governing Sprat Bay Estates and "concluded that the determination of fees and assessments and the imposition of liens and the foreclosure of such liens for non-payment of fees and assessments are solely the responsibility of the

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<sup>5</sup> As far as the record reveals, this means there are actually two outstanding notices of liens against the properties owned by The Nature Conservancy.

Association acting through its Board of Directors and are not within the authority of any individual member of the Association." It thus appears that plaintiff Malpere, who filed the liens, was not acting under any authority to do so. In the same vein, plaintiffs have failed to demonstrate any property right in the RBLP and The Nature Conservancy parcels that would allow them to file a lis pendens. Defendants are therefore entitled to summary judgment on Count I of their counterclaim, seeking invalidation of the liens.

For the foregoing reasons, I will grant defendants' motion for summary judgment on all plaintiffs' claims, as well as on Count I of the defendants' counterclaim. Defendants have noted the Alice-in-Wonderland nature of this case. This case demonstrates how an unprincipled minority of dissenting homeowners has willfully obstructed the legitimate operation and goals of the majority by filing a frivolous lawsuit to the great expense and frustration of all, not to mention the colossal waste of the Court's precious and limited resources.

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Defendants.	)	
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Steven J. Malpere,  
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*Plaintiff pro se,*

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St. Thomas, USVI  
*Plaintiffs pro se,*

Daryl Dodson, Esq.  
St. Thomas, USVI  
*For the defendants.*

**ORDER**

For the reasons stated in the attached memorandum of even date, it is hereby **ORDERED**, that the defendants' motion for summary judgment as to all claims against them by plaintiffs is **GRANTED** and defendants motion for partial summary judgment on Count I of their counterclaim against plaintiffs is also **GRANTED** and all liens and the lis pendens filed by plaintiffs are **VACATED**. For the same reasons plaintiffs' cross-motion for summary judgment is **DENIED**.

**ENTERED** this 22nd day of December, 2004.

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas K. Moore  
District Judge

ATTEST:  
**WILFREDO F. MORALES**  
Clerk of the Court

By:\_\_\_\_\_/s/\_\_\_\_\_  
Deputy Clerk

**Copies to:**  
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